Indiana County Courthouses

The Indiana Prosecutor

ADMINISTRATIVE RULE 9—YET ANOTHER REVISION

In July, the Indiana Supreme Court once again amended Administrative Rule 9, effective January 1, 2006. The amended Rule now provides that the following information in case records is excluded from public access and is confidential.

(1) *Case Records*

(d) Complete Social Security Numbers of living persons.

(e) With the exception of names, information such as addresses, phone numbers, and dates of birth which explicitly identifies:

(i) natural persons who are witnesses or victims (not including defendants) in criminal, domestic violence, stalking, sexual assault, juvenile, or civil protection order proceedings, provided that juveniles who are victims of sex crimes shall be identified by initials only;

(ii) places of residence of judicial officers, clerks, and other employees of courts and clerks of court; unless the person or persons about whom the information pertains waives confidentiality;

(f) Complete account numbers of specific assets, liabilities loans, bank accounts, credit cards, and personal identification numbers (PINS) not admitted into evidence as part of a public proceeding;❖

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- **EXIGENT CIRCUMSTANCES SUPPORT WARRANTLESS SEARCH**

***State v. Crabb*, ___N.E.2d___ (Ind. Ct. App 10/20/05)**

A concerned neighbor called the State Police Post to report an odor at her apartment complex. She described the odor as a mixture of roach spray and rubbing alcohol. The caller further noted her concern that a small child lived in the apartment from which the smell was emanating. Several troopers were dispatched and upon their arrival at the complex noted the smell of ether coming from the apartment occupied by Scott Michael Crabb. The troopers knew the distinctive odor they detected to be evidence of possible methamphetamine manufacturing inside the apartment.

The knocking at the door and ringing the door bell did not get a response from the people inside the apartment. The officers did see the window covering on the apartment's front window move as if someone was trying to peek outside. There was a cooler sitting on the front porch which the troopers found to contain a jar and hoses, also evidence of the manufacture of methamphetamine. The troopers got a key for the apartment from the property manager only to discover that the front door was secured with a deadbolt lock. One of the troopers thereafter opened a window, cut the screen and gained entry to the defendant's apartment through that window. The trooper ordered the occupants out of the apartment at gunpoint. Those exiting included the defendant, Scott Crabb. The apartment was searched. Troopers found precursors and other materials used in the manufacture of meth. After searching the apartment, the ISP officers got a search warrant for the property.

After the trial court suppressed the evidence found in Crabb's apartment, the State dismissed the charges against Crabb and initiated an appeal of the judge's ruling. The Court of Appeals reversed the trial court. The troopers in this case were presented with indicia of drug manufacture as well as a reliable report of a small child inside, the Court reasoned. The officer also noticed the rustling of the window covering indicating to them that there were persons inside the apartment. These circumstances, the Court said, gave the troopers reason to believe that a person inside the apartment was in immediate need of aid.

The Court went on to say that it was not ready to draw a bright line rule that would allow officers to enter a residence without a warrant based solely upon the smell of ether. That smell, in conjunction with other observations and the report that there was a child inside however, justified the warrantless entry and search of Cobb's apartment under the exigent circumstances exception to the warrant requirement, the Court held.

Although the reported opinion did not so state, Clark County Prosecutor Steve Stewart informed IPAC that the officers, during their search, found methamphetamine inside the child's crib. ❖

- **PACKAGE LABEL SUFFICIENT EVID. R. 803(17)**

***Reemer v. State*, ___N.E.2d___ (Ind. Sup. Ct. 10/25/05)**

Aaron Reemer was observed twice within a two hour time block purchasing nasal decongestant tablets at the Meijer store in Kokomo. A Meijer loss prevention officer reported his observations to the Kokomo Police Department and officers from that department arrived at the Meijer parking lot just prior to Reemer and his companions leaving that location. One of the passengers in Reemer's vehicle got out of the car when it pulled into the adjacent Meijer gas station and threw something into a trash can at that location. After the car left the station, the officers found the only contents of that trash can to be a receipt and several empty nasal decongestant boxes. The officers approached Reemer's vehicle when it made a second stop at yet another gasoline station. A search of the vehicle revealed 24 blister packs containing a total of 576 nasal decongestant tablets.

The state offered into evidence at Reemer's trial the discarded labels from the boxes of nasal decongestants found in the trash to prove the weight and content of the tablets found in Reemer's possession. Those labels stated that tablets in the packages contained "pseudoephedrine hydrochloride." Reemer objected to the labels, arguing that the writing upon them constituted inadmissible hearsay. The trial court admitted the labels under the "Market Reports, Commercial Publications" exception to the hearsay rule, Evid R. 803(17). The defendant also argued that the statute describes pseudoephedrine as a precursor of methamphetamine. The tablets in the defendant's possession had only been shown to contain pseudoephedrine hydrochloride. The State had failed to prove that pseudoephedrine hydrochloride was a salt of pseudoephedrine, the defendant argued. The Court of Appeals agreed that there was a gap in the proof presented by the State and reversed the defendant's possession of a precursor conviction. Thus finding, the Court of Appeals mooted the hearsay issue and did not address that question on appeal.

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Recent Decisions Update (continued)

The Supreme Court granted transfer and on October 25, reversed the holding of the Court of Appeals. The Supreme Court reasoned that labeling on tablets such as those found in the defendant's possession are subject to federal and state laws. People rely upon the regulated manufacturing practices and mandatory labeling required in the drug industry to assure them that the pharmaceuticals they buy or prescribe are what they are represented to be. The Supreme Court concluded that labels on commercially marketed drugs are properly admitted as exceptions to the hearsay rule under Evid. R. 803(17).

The Supreme Court also held that in that the precursor statute identifies the "salts, isomers, or salts of isomers" of ephedrine and pseudoephedrine as prohibited substances, pseudoephedrine hydrochloride falls within the list of statutorily prohibited chemical reagents or precursors. The State need not provide expert testimony or lab results to prove that pseudoephedrine hydrochloride is, in fact, pseudoephedrine or a salt of pseudoephedrine, the Court decided. The Court held that the State had provided sufficient evidence that Reemer was in possession of a precursor to methamphetamine at the time of his arrest. Reemer's conviction was affirmed. ❖

- **INFRACTION CASE GETS A JURY TRIAL**

***Cunningham v. State,* ___N.E.2d____(Ind. Ct. App 10/25/05)** The dispositive issue in the appeal filed by Elliot Cunningham was whether the trial court properly denied Cunningham's request for a jury trial. The Court of Appeals held that he was, in fact, entitled to a jury trial, and reversed the judgment of the trial court.

Cunningham received a Uniform Traffic Ticket after he was stopped for speeding. Cunningham requested a jury trial which request the trial court denied. On December 13, 2004, the trial court entered a decision in favor of the State and ordered Cunningham to pay fines and court costs in the amount of $96.50. Cunningham appealed.

Bottom line: The Court of Appeals held that the trial court improperly denied Cunningham's request for a jury in violation of Article I, Section 20 of the Indiana Constitution. The case was remanded for further proceedings. ❖

- **WILL HIGH COURT REVIEW *HAMMON*?** From *Law.Com* (10/27/05)

Two petitions for *certiorari* that raise confrontation clause issues in the context of excited utterance exceptions to hearsay rules are pending before the United State Supreme Court this term. *Davis v. Washington,* and *Hammon v. Indiana*, are both domestic violence cases. They are also both listed for action by the Court at its October 28 conference. The court's decision on whether it will hear the cases is expected on October 31.

Prior to *Crawford v. Washington*, in March, 2004, any hearsay statement could come in to evidence if the hearsay exception under which it fell was firmly rooted and the judge found the statement to be reliable and trustworthy in the circumstances in which it was made. *Crawford,* on the other hand, bars hearsay statements unless the defense has had an opportunity to question the person who made the statement, and that person is unavailable at the time of trial. There has been a great deal of confusion as to just what constitutes a "testimonial" statement in the wake of *Crawford.*

Law.Com reports that most courts that have dealt with this issue have said that whether or not a statement is testimonial depends on the circumstances, but there is wide disparity among those courts as to what those circumstances are.

Amy Hammon initially told police that everything was fine when they responded to a domestic disturbance call at the home she shared with her husband, Hershel. When questioned again, however, Amy told the police that her husband had punched her and thrown her to the ground into broken glass. Amy also completed a domestic battery affidavit at the officer's request.

Amy was subpoened to testify at her husband's bench trial, but failed to appear. The judge allowed the officer who had talked with Amy to testify as to Amy's statements to him under the excited utterance exception to Indiana's hearsay rule. Hershel was convicted. The Indiana Supreme Court held first, that the motivation of the officer even more than the motivation of the victim had to be considered in deciding whether the statement of the victim was testimonial. The Court held that "Responses to initial inquiries by officers arriving at a scene are typically not testimonial."

Richard Friedman, Hershel Hammon's lead counsel before the U.S. Supreme Court told *Law.Com.* that the Indiana Court got it wrong. "The decisive criterion is not a witness's –in this case the accuser's—subjective purpose or motivation, but rather whether a reasonable person in her position would anticipate that the statement would likely be used in investigating or prosecuting a crime," Friedman said. Deputy Attorney General Thomas M. Fisher disagreed. "Particularly in domestic violence situations it is important that police have the leeway to carefully assess the scene before victim statements are deemed testimonial," Fisher told *Law.Com.* "The confrontation clause should not be construed in a way that would discourage police from determining whether the victim needs immediate protection." ❖